

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 13, 2004

**SENATE BILL**

**No. 1768**

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**Introduced by Senator Romero**

February 20, 2004

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An act ~~amend Sections 6126 and 6129 of the Penal Code~~, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1768, as amended, Romero. The Inspector General.

Existing law provides that there is an independent office of the Inspector General, responsible for reviewing departmental policy and procedures and conducting investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, or upon his or her own accord. ~~Existing law requires these entities to refer matters involving criminal conduct to the proper law enforcement authorities for further action. Generally, under existing law, district attorneys, under the supervision of the Attorney General, are charged with prosecuting crime.~~

~~This bill would provide that the Inspector General shall also have the authority to prosecute employees of those entities who have engaged in criminal misconduct after his or her independent evaluation of the sufficiency of the evidence referred to him or her to sustain a conviction. This bill would also provide that if the office of Inspector General~~

~~refuses to accept the case, it shall refer the matter to the Attorney General.~~ Existing law provides that the Inspector General, and specified others in the Office of the Inspector General are peace officers, provided that their primary duty shall be conducting audits of investigatory practices and other audits, as well as conducting investigations, of certain of the above correctional boards and agencies.

*This bill would make findings and declarations of the Legislature that the 1999 act that made the Inspector General and specified others in the Office of the Inspector General peace officers authorized those peace officers to request and execute a search warrant, as specified. It would also state that it remains the intent of the Legislature that the 1999 act authorize the Inspector General, and other peace officers within the Office of the Inspector General, to request and execute a search warrant, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1.—Section 6126 of the Penal Code is amended to~~
- 2    *SECTION 1. (a) The Legislature finds and declares that*
- 3    *Chapter 918 of the Statutes of 1999, which conferred peace officer*
- 4    *status on the Inspector General and on other specified persons*
- 5    *within the Office of the Inspector General, authorized those peace*
- 6    *officers to request and execute a search warrant as described in*
- 7    *sections 1523 and 1524 of the Penal Code.*
- 8    *(b) It remains the intent of the Legislature that Chapter 918 of*
- 9    *the Statutes of 1999 authorizes the Inspector General and other*
- 10    *peace officers within the Office of the Inspector General to request*
- 11    *and execute a search warrant as described in Sections 1523 and*
- 12    *1524 of the Penal Code.*
- 13    ~~read:~~
- 14    ~~6126.—(a) The Inspector General shall be responsible for~~
- 15    ~~reviewing departmental policy and procedures for conducting~~
- 16    ~~audits of investigatory practices and other audits, as well as~~
- 17    ~~conducting investigations of the Department of Corrections, the~~
- 18    ~~Department of the Youth Authority, the Board of Prison Terms, the~~
- 19    ~~Youthful Offender Parole Board, the Board of Corrections, the~~
- 20    ~~Narcotic Addict Evaluation Authority, the Prison Industry~~

~~Authority, and the Youth and Adult Correctional Agency, as requested by either the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General. The Inspector General may, under policies developed by the Inspector General, initiate an investigation or an audit on his or her own accord.~~

~~(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.~~

~~(c) The Inspector General shall, during the course of an investigatory audit, identify areas of full and partial compliance, or noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies, additional policies, or changes in policy, as well as any other findings or recommendations that the Inspector General deems appropriate.~~

~~(d) The Inspector General shall have the authority to prosecute employees of the entities listed in subdivision (a) who have engaged in criminal misconduct. In considering whether to prosecute a case, the Inspector General shall make an independent evaluation of the evidence of criminal conduct being referred to him or her pursuant to subdivision (f) of Section 6129 and shall make a de novo determination whether to accept the case based upon whether there is sufficient evidence to sustain a conviction. Criminal misconduct may include, but is not limited to, and of the following:~~

~~(1) Use of excessive force.~~

~~(2) Use of force resulting in injury or death.~~

~~(3) Suicide or attempted suicide.~~

~~(4) Unattended death.~~

~~(5) Sexual assault.~~

~~SEC. 2. Section 6129 of the Penal Code is amended to read:~~

~~6129. (a) (1) For purposes of this section, "employee" means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.~~

~~(2) For purposes of this section, “retaliation” means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:~~

~~(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.~~

~~(B) Has cooperated or is cooperating with any investigation of improper governmental activities.~~

~~(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.~~

~~(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:~~

~~(A) Unwarranted or unjustified staff changes.~~

~~(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.~~

~~(C) Unwarranted or unjustified formal or informal investigations.~~

~~(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.~~

~~(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.~~

~~(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.~~

~~(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State~~

~~Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.~~

~~(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.~~

~~(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.~~

~~(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.~~

~~(f) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action. The entity making a referral to the local district attorney shall also notify the Attorney General and Inspector General of the action. If the local district attorney refuses to accept the case, he or she shall notify the referring entity who shall subsequently refer the matter to the office of Inspector General which shall confer and consult with the Attorney General. If the office of Inspector General refuses to accept the case, the Inspector General shall refer the matter to the Attorney General. If the local district attorney has not acted on the matter, the referring entity shall notify the office of Inspector General and the Attorney General within 60 days. It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation that may arise in a case in which an investigation has been or is currently being conducted by the~~

1 ~~Bureau of Investigation by contracting when necessary for private~~  
2 ~~counsel.~~

3 ~~(g) Upon the completion of any investigation, the Inspector~~  
4 ~~General shall prepare a written report, which shall be held as~~  
5 ~~confidential and disclosed in confidence, only to the Secretary of~~  
6 ~~the Youth and Adult Correctional Agency, the Governor, and the~~  
7 ~~appropriate director or law enforcement agency. A summary of the~~  
8 ~~report's findings and conclusions shall be made available, upon~~  
9 ~~request, to the person who requested the investigation, the person~~  
10 ~~or persons who were the subjects of the investigation, and to any~~  
11 ~~Member of the Legislature.~~

12 ~~(h) Nothing in this section shall preclude the office of the~~  
13 ~~Inspector General from following all applicable laws regarding~~  
14 ~~confidentiality, including, but not limited to, the California Public~~  
15 ~~Records Act, the Public Safety Officers Procedural Bill of Rights,~~  
16 ~~the Information Practices Act of 1977, the Confidentiality of~~  
17 ~~Medical Information Act, and the provisions of Section 832.7~~  
18 ~~relating to the disposition notification for complaints against peace~~  
19 ~~officers.~~

